IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

IN RE:	§	
	§	
ROBERT EUGENE BEAM,	§	CASE NO. 401-41755-DML-13
	§	
DEBTOR	§	

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on the Motion of Tonya Scrabeck ("Scrabeck") to dismiss this chapter 13 case. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1334(a) and 157(b)(1). This Memorandum constitutes this Court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052 and 9014.

I. Background

On July 7, 2000 (before the filing of Debtor's petition), Scrabeck filed suit in the 342nd Judicial District Court in Tarrant County, Texas against Debtor Robert Eugene Beam ("Debtor" or "Beam") d/b/a Mr. Quality Remodeling and Roofing. Beam made no response to the suit, and Scrabeck proved up a default judgment on March 9, 2001. At the default hearing, the state district judge quantified the judgment against Beam in the amount of $305,310.27, including actual and punitive damages, attorney's fees and costs. The award of judgment, Scrabeck asserts and Debtor does not dispute, was contemporaneously reflected on the docket sheet in the case. A written judgment was not signed by the judge until March 15, 2001. Debtor filed his chapter 13 petition on March 12, 2001.

Scrabeck filed her Amended Motion to Dismiss Case (the "Motion") on September 12, 2001. In her Motion and the Brief in Support of Creditor's Amended

Motion to Dismiss Case (the "Brief"), Scrabek asserts that (1) the underlying state court judgment is fully effective; (2) the entry of a judgment by that court was a ministerial act; (3) a default judgment entered in state court is binding on a bankruptcy court; (4) the judgment constitutes a non-contingent, liquidated, unsecured debt; and (5) Beam is ineligible for chapter 13 relief because (including the judgment) the amount of his unsecured debt exceeds the maximum allowed under the Code. *See* 11 U.S.C. § 109(e).

Debtor responded to Scrabek's Motion on October 3, 2001. On October 19, 2001, a hearing was held on the matter, and the parties were directed to submit briefs to this Court. In his Brief in Opposition to Tonya Scrabek's Motion to Dismiss Case (the "Opposition Brief"), the Debtor argued that (1) a debt for purposes of § 109(e) must be liquidated and non-contingent as of the date of filing; (2) post-petition events cannot be considered to determine the amount of a debt; (3) Scrabek's reliance on the state court's docket sheet is misplaced; (4) the state court judgment is void; and (5) Debtor's unsecured debts therefore should not be considered to include Scrabeck's judgment for purposes of 11 U.S.C. §109(e).

II. Discussion

The issue in this matter is simply whether Beam is qualified to be a chapter 13 debtor under 11 U.S.C. §109(e):

> Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $269,250 and noncontingent, liquidated, secured debts of less than $807,750…may be a debtor under chapter 13 of this title.[1]

[1] This section was amended in 2002 to allow for $290,525 in noncontingent, liquidated, unsecured debts. Nevertheless, Debtor would still not qualify to be a chapter 13 debtor even allowing for the increase in permissible debt amounts if the judgment is counted.

Since Beam's unsecured debt excluding the Scrabeck judgment totaled $27,037.00, Beam's eligibility for chapter 13 relief turns on whether the judgment liquidated the debt to Scrabeck so that its amount should be included in determining his total of unsecured debt (there is no issue that Beam's liability is dependent on a contingency).

When the trial court judge determined the amount of the judgment in open court, the amount became liquidated, regardless of the fact that it was not reduced to a *written* judgment until after Debtor's filing. The Court holds Scrabeck's statement of Texas law is correct,[2] and entry of the judgment against Debtor constituted a ministerial act so that the judgment was final upon the state court's oral statement of judgment. *Oak Creek Homes v. Jones*, 758 S.W.2d 288 (Tex. App.—Waco 1988, no writ); *Knox v. Long*, 257 S.W.2d 289 (Tex. 1953).

Moreover, in the case at bar Debtor listed the state court judgment[3] on his Schedule F, and did not indicate that the amount was contingent or unliquidated, as he might have according to the form. Debtor's recognition of the judgment in his schedules is a factor this Court certainly may consider in deciding the issue at hand. Thus, according to his own schedules Debtor was ineligible for Chapter 13 relief.

Debtor, however, argues that *entry* of written judgment was the critical event liquidating Scrabeck's claim. Since entry of the judgment occurred after Debtor's filing, it would then be void by reason of the automatic stay of 11 U.S.C. §362. But even if

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[2] The authorities cited by Debtor are inapplicable. *See First National Bank of Giddings, Texas v. Birnbaum*, 826 S.W.2d 189 (Tex. App.—Austin 1992, no writ); *Emerald Oaks Hotel/Conference Center, Inc. v. Zardenetta*, 776 S.W.2d 577 (Tex. 1989); *Guyot v. Guyot*, 3 S.W.3d 243 (Tex. App.—Fort Worth 1999); and *N-S-W Corp. v. Snell*, 561 S.W.2d 798 (Tex. 1977). Debtor relies on Texas cases based on a party's failure to comply with specific rules of Texas procedure. Such cases are inapposite to the case at bar.

[3] He listed the judgment as $212,500, while listing the remaining amounts under attorney's fees owed to Scrabek's attorney ($50,000) and court costs ($311.00).

entry of the judgment was necessary to liquidate the debt, the entry did not violate the stay. Based on facts similar to the instant case, the court in *In re Papatones*, 143 F.3d 623, 625 (1st Cir. 1998), held that under Maine law it was the docketing of a judgment that liquidated the debt. Even though docketing occurred after filing, the court of appeals, per Judge Cyr,[4] held the stay was not violated.

However, Debtor argues that post-petition events can have no bearing on his eligibility for chapter 13. As Scrabeck's judgment was docketed post-petition, Debtor argues, he need not count it in his total of unsecured debt. But even if the docketing of the state court judgment is the point at which liquidation occurs under Texas law, the Fifth Circuit's decision in *In re Nikoloutsos*, 199 F.3d 233 (5th Cir. 1999), makes clear that it is not material that the docketing was post-petition. In *Nikoloutsos*, the debtor attempted to convert his chapter 7 bankruptcy to chapter 13 after a state court judgment had been entered against him post-petition for $600,000 in compensatory damages (punitive damages had yet to be determined).[5] *Id.* at 237. If the judgment counted, the liquidated, unsecured debt of the debtor would exceed the limit imposed by § 109(e). The Court of Appeals held that the judgment prevented the debtor from converting the case to chapter 13.[6] *See id*.

The state court judgment therefore would cause Debtor to exceed the permissible amount of unsecured debt under § 109(e) of the Code, even if it is not considered liquidated until after filing.

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[4] Circuit Judge Conrad Cyr served as a bankruptcy judge for many years, and opinions of the First Circuit authored by him are therefore especially persuasive for the Court.

[5] The bankruptcy court had modified the automatic stay of 11 U.S.C.§ 362(a) to permit pursuit of the state court proceedings.

[6] 11 U.S.C. § 348(b) provides that the date of conversion will be treated for some purposes at the date of filing. Eligibility under § 109(e) is not one of them.

For the foregoing reasons, it is

ORDERED that Debtor's chapter 13 case be dismissed without prejudice to refiling under an appropriate chapter.

SIGNED this the 22nd day of February, 2002.

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DENNIS MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE